S.B.CIVIL SECOND APPEAL NO.237/2004

Iqbal Singh vs. Harjeet Kaur.

DATE OF JUDGMENT ::: 7.12.2005

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. GJ Gupta, for the appellant.

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Heard learned counsel for the appellant.

The appellant sought specific performance of contract dated 21.2.1981 by filing the suit on 5.8.1993. The trial court decreed the suit of the plaintiff for refund of money which he paid. Against this judgment and decree dated 27.11.2000, the appellant preferred appeal which was dismissed by the appellate court vide judgment and decree dated 24.7.2002.

Learned counsel for the appellant submits that the appellant did not file the suit earlier because of the fact that the defendant left India as she went to U.S.A. and when she came to India, she refused to execute the sale deed, therefore, the plaintiff filed the present suit for specific performance of contract.

The facts referred above itself are sufficient for dismissal of this appeal because of the fact that the

appellant want to take benefit of a circumstance which was not in control of the appellant himself and there is no explanation if the defendant would not have come to India, what the plaintiff would have done of the agreement dated 21.2.1981.

It appears that the courts below rightly dismissed the suit of the plaintiff. Otherwise also, looking to the facts of the case, this Court do not find any reason for upsetting the decree passed for dismissal of the suit for the purpose of passing any decree of specific performance of contract of the year 1981 after hearing the respondents in future which would be after more than 24 years.

No substantial question of law is involved in this appeal. Accordingly, this appeal deserves to be dismissed and hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya